

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

BERNICE RICHARDSON

Plaintiff,

V.

Case No. 2:12-cv-2257

**PRIMACY HEALTHCARE
AND REHABILITATION CENTER,
KINDRED TRANSITIONAL CARE
AND REHABILITATION – PRIMACY,
KINDRED HEALTHCARE SERVICES,
INC., and KINDRED NURSING CENTERS
LIMITED PARTNERSHIP,**

Defendants.

NOTICE OF REMOVAL

Defendants Kindred Healthcare Services, Inc., d/b/a Kindred Transitional Care and Rehabilitation – Primacy, formerly d/b/a Primacy Healthcare and Rehabilitation Center, and Kindred Nursing Centers Limited Partnership (“Kindred Defendants”) file this Notice of Removal removing this action from the Circuit Court of Shelby County Tennessee for the Thirtieth Judicial District at Memphis to the United States District Court for the Western District of Tennessee, Western Division, pursuant to 28 U.S.C. §§ 1332, 1441 and 1446. In support of this Notice of Removal, Kindred Defendants state as follows:

1. By filing this Notice of Removal, Kindred Defendants do not waive any defenses, and Kindred Defendants expressly reserve all available defenses and affirmative defenses.

including but not necessarily limited to those defenses enumerated in Rule 12(b) of the *Federal Rules of Civil Procedure*.

2. The above-captioned action was filed in the Circuit Court of Shelby County Tennessee for the Thirtieth Judicial District at Memphis on February 27, 2012 and is pending under Case No. CT-000862-12. Copies of all pleadings served upon Kindred Defendants in this action are attached to this Notice of Removal as collective **Exhibit A** and are incorporated herein by reference. The Plaintiff's Complaint purports to set forth claims involving alleged personal injuries and medical malpractice occurring in Shelby County, Tennessee.

3. The United States District Court for the Western District of Tennessee, Western Division, is the court and division embracing the place wherein such action is pending in state court, *i.e.*, Shelby County, Tennessee.

4. Kindred Defendants first received service or notice of the Complaint on March 1, 2012. This Notice of Removal is, therefore, timely filed within thirty days of receipt by service of the initial pleadings, pursuant to 28 U.S.C. § 1446(b).

5. Pursuant to 28 U.S.C. § 1446(d), all adverse parties are being provided with written notice of removal and this Notice of Removal is being filed with the Clerk of the Circuit Court of Shelby County Tennessee for the Thirtieth Judicial District at Memphis.

6. This action was commenced against Kindred Defendants in the Circuit Court of Shelby County Tennessee for the Thirtieth Judicial District at Memphis, and is of a civil nature alleging medical malpractice, common law negligence and personal injuries

7. The underlying State Court action is one in which this Court had original jurisdiction under the provisions of 28 U.S.C. § 1332 and is one which may be removed to this Court by Kindred Defendants pursuant to the provisions of 28 U.S.C. § 1441 since the matter in

controversy exceeds the sum or value of \$75,000.00, exclusive of interest and costs, and is between citizens of different states.

Diversity of Citizenship

8. According to the Summons in this action, Plaintiff Bernice Richardson resides at 4545 Whitewood Cove, Memphis, Tennessee 38109.

9. Defendant Kindred Healthcare Services, Inc., d/b/a Kindred Transitional Care and Rehabilitation – Primacy, formerly d/b/a Primacy Healthcare and Rehabilitation Center is a Delaware corporation, with its principal place of business in Kentucky.

10. Defendant Kindred Nursing Centers Limited Partnership was formed in Delaware and has its principal place of business in Kentucky and its partners have citizenship in Kentucky.

11. Accordingly, because Plaintiff is a citizen of Tennessee and Defendants are citizens of states other than Tennessee, complete diversity exists among the parties pursuant to 28 U.S.C. § 1332.

Amount in Controversy

12. Plaintiff alleges, among other claims, medical negligence under the Tennessee Medical Malpractice Act and common law negligence, and seeks compensation from Defendants for Plaintiff's: (1) past, present, and future physical pain and suffering; (2) past, present, and future emotional pain and suffering; (3) medical bills and expenses; (4) past, present, and future loss of enjoyment of life; (5) pre-judgment and post-judgment interest; and (6) other relief to which she may be entitled.

13. Although Plaintiff has not stated a specific amount of monetary damages, based on the extent of the alleged injuries and the extent of the allegations of medical malpractice and common law negligence, it is clear that Plaintiff is seeking more than \$75,000 in damages and

therefore the amount in controversy exceeds \$75,000, exclusive of interest and costs, in accordance with 28 U.S.C. § 1332.

Venue

17. Venue properly rests in the Western Division of the United States District Court for the Western District of Tennessee pursuant to 28 U.S.C. § 1391(a)(2) and 28 U.S.C. § 123(c)(1).

WHEREFORE, PREMISES CONSIDERED, Defendants Kindred Healthcare Services, Inc., d/b/a Kindred Transitional Care and Rehabilitation – Primacy, formerly d/b/a Primacy Healthcare and Rehabilitation Center, and Kindred Nursing Centers Limited Partnership request that the above action, now pending in the Circuit Court of Shelby County Tennessee for the Thirtieth Judicial District at Memphis, be removed to this Court.

Respectfully submitted,

/s/ J. Bennett Fox, Jr.

F. LAURENS BROCK (17666)

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Attorneys for Defendants

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing NOTICE OF REMOVAL has been served on counsel for Plaintiff, Les Jones and David E. Goodman, Jr., Burch, Porter & Johnson, PLLC, 130 North Court Avenue, Memphis, Tennessee 38103, and Richard D. Click, Taylor, Click & McArthur, 1044 Brookfield, Suite 101, Memphis, TN 38119 by regular U.S. Mail, postage prepaid, this the 30th day of March 2012.

/s/ J. Bennett Fox, Jr.
J. Bennett Fox, Jr.